IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9681 of 2007(C)

OS.387/1998 of PRL.SUB COURT,KOTTAYAM

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PETITIONER:

ANIL KUMAR, AGED 47, S/O. SREEDHARAN NAIR,
RESIDING AT 15/792, RADHIKA, SANATHANAM
WARD, ALAPPUZHA DISTRICT.

BY ADV. SMT.J.SHEEBA MARIAM
SRI.S.GIRISH

RESPONDENTS:

STATE BANK OF TRAVANCORE, A BODY CORPORATE
CONSTITUTED AND GOVERNED BY STATE BANK
OF INDIA (SUBSIDIARY BANK'S ACT) WITH ITS
HEAD OFFICE AT THIRUVANANTHAPURAM AND
BRANCHS AT SEVERAL PLACES INCLUDING ONE
AT THIRUMOOLAPURAM, THIRUVALLA.

BY ADV. SRI.V.P.SANTHOSH KUMAR
SRI.SATHISH NINAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 9681 of 2007 C

JUDGMENT

Heard counsel for the petitioner.

2. The petitioner is the defendant in O.S.No. 387/98 on the file of the Sub Court, Kottayam. His case is that as he was employed abroad, he executed a Power of Attorney in favour of his wife and she engaged a counsel on his behalf to contest the case. But, no written statement could be filed, as he could not furnish the details and therefore, he was set ex parte and an ex parte decree was passed in the suit on 18.12.2000. According to him, on receipt of Exhibit P1 sale notice, he filed I.A. No.947/07 to have the ex parte decree set aside and the trial court posted the case for hearing to 1.6.2007.

3. The prayer in this writ petition is to quash Exhibit P1 sale notice issued in execution

and to stay the entire execution proceedings till the final disposal of I.A.No.947/07. It is submitted that the petitioner has moved this Court, as no orders are passed on the stay petition filed along with I.A.No.947/07 by the Sub Judge, Kottayam. But, the counsel for the petitioner is not able to say the IA number of the said stay petition.

3. If at all a stay petition is filed before the trial court along with the application for setting aside the ex parte decree, it is for the petitioner to move that petition and obtain appropriate orders. The petitioner cannot invoke jurisdiction of this Court under Article 227 of the Constitution of India, when he has no case that the court below refused to take up the stay petition and pass appropriate orders, despite the request made in that behalf.

In the result, without prejudice to the petitioner moving for stay before the trial court

in the proceedings to have the ex parte decree set aside, this writ petition is dismissed.

21st March, 2007 (K.P.Balachandran, Judge)

tkv